

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OPTIMIZERX CORPORATION,
a Michigan corporation,

Plaintiff/Counter-Defendant,

v.

Case No. 13-10481

SKYSCAPE.COM, a Delaware
corporation,

HON. AVERN COHN

Defendant/Counter-Plaintiff.

PRETRIAL ORDER NO. 1

This is a patent case. The patent-in-suit is U.S. Patent No. 8,341,015 (the '015 patent).

The Court held a tutorial hearing and status conference on November 4, 2013.

At the status conference following the tutorial, Skyscape said there are ambiguous words and/or phrases in both claims of the '015 patent. To move the case forward, the Court will engage in a *Markman* proceeding as follows:

1. Skyscape shall identify the ambiguous words/phrases in the claims by November 26, 2013.
2. OptimizeRX shall offer its interpretation of the identified words/phrases by December 17, 2013.
3. Skyscape shall respond to OptimizeRX's interpretation by December 30, 2013.
4. A *Markman* hearing will be held on January 8, 2014 at 10:00 a.m.

5. If either party relies on the prosecution history of the '015 patent, the parties shall lodge with the Court a tabbed and indexed 3-ring binder containing the prosecution history. The parties shall cite to this copy of the prosecution history in their papers.

6. The parties' papers relating to claim interpretation shall include a chart of the parties' interpretation of ambiguous words/phrases in non-argumentative form. See attached Exhibit A.

Any objections to this order shall be filed within five (5) business days.

SO ORDERED.

s/Avern Cohn
UNITED STATES DISTRICT JUDGE

Dated: November 8, 2013

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, November 8, 2013, by electronic and/or ordinary mail.

S/Carol Bethel for Sakne Chami
Case Manager, (313) 234-5160

CONSTRUCTION OF CLAIM 10 OF U.S. PATENT 5,628,433

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		PLAINTIFF'S CONSTRUCTION	DEFENDANT'S CONSTRUCTION	COURT'S CLAIM CONSTRUCTION
1	10. A tube for receiving a fluent material comprising:	An integral tube body	No contest with plaintiff's construction.	
2	a hollow tube body being generally cylindrical	which is generally cylindrical.	No contest with plaintiff's construction.	
3	and extending from a rear end	The tube body has a rear end. The term "end" defines an area, and not an edge. (Designated "3a" in the attached drawing)	The tube body has a rear end. The term "end" is defined by the rear edge of the tube body. (Designated "3b" in the attached drawing)	Defendant's Construction
4	to a nozzle end;	The tube body has a nozzle end. The term "end" defines an area, and not an edge. (Designated "4a" in the attached drawing)	The tube body has a nozzle end. The term "end" is defined by the forward edge of the tube body. (Designated "4b" in the attached drawing)	Defendant's Construction
5	a plurality of ribs extending radially inwardly from an inner peripheral wall of said tube, said ribs extending radially inwardly for a depth that is less than 0.5% of a diameter of said tube; and	The tube includes ribs extending radially inwardly from an inner peripheral wall of the tube and having the claimed depth.	No contest with plaintiff's construction.	
6	a plunger having an outer peripheral surface closely matched to said inner peripheral surface of said tube,	The plunger has an outer peripheral surface which is closely matched to the inner peripheral surface of the tube.	No contest with plaintiff's construction.	
7	such that when said plunger is received within said tube, air spaces are formed between said plunger and said tube by said ribs, said ribs each occupying an area that is less than 0.5% of the area of said tube,	The air spaces are formed between the outer peripheral surface of the plunger and the inner peripheral surface of the tube by the ribs, with the ribs each occupying an area of the claimed dimension.	No contest with plaintiff's construction.	
8	and said ribs extending to said rear end of said hollow tube body.	The ribs are in the "rear end" (as defined in 3 above) of the hollow tube body.	The ribs extend from a point remote from the rear end "to" the rear end or edge of the tube body.	Defendant's Construction